

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:

DAVID AND PANDORA BRITT
DEBTOR.

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§
§
§

CASE NO: 19-42383
(Chapter 13)

ENG'S COMMERCIAL FINANCE CO.'S
MOTION FOR RELIEF FROM AUTOMATIC STAY

Notice Pursuant to Local Bankruptcy Rule 4001-1:

YOUR RIGHTS MAY BE AFFECTED BY THE RELIEF SOUGHT IN THIS PLEADING. YOU SHOULD READ THIS PLEADING CAREFULLY AND DISCUSS IT WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THIS BANKRUPTCY CASE. IF YOU OPPOSE THE RELIEF SOUGHT BY THIS PLEADING, YOU MUST FILE A WRITTEN OBJECTION, EXPLAINING THE FACTUAL AND/OR LEGAL BASIS FOR OPPOSING THE RELIEF.

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE SHOWN IN THE CERTIFICATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING WITH APPROPRIATE NOTICE. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

ENG'S COMMERCIAL FINANCE CO. ("ENG'S"), a secured creditor and party in interest in the above bankruptcy case, files this *Motion for Relief from Automatic Stay* (the "Motion"), and in support thereof, respectfully shows the Court as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter, the parties, and the property affected hereby, pursuant to 28 U.S.C. §§ 157(b) and 1334.
2. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (G), and (O).
3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The basis for the relief requested herein is § 362(d)(1) and (2) of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure 4001 and 9014 and Local Rule 4001 of the United States Bankruptcy Court for the Southern District of Texas.

BACKGROUND

5. On September 2, 2019 (the "Petition Date"), Debtors filed a voluntary petition for relief under Chapter 13 of Title 11 of the United States Code (the "Bankruptcy Code"), thereby commencing the above-referenced Chapter 13 bankruptcy case (the "Bankruptcy Case") in this Court.

A. The Commercial Finance Agreement

6. Debtors, David and Pandora Britt, are indebted to ENGS under a Commercial Finance Agreement (the "Contract") with ENGS for the purchase of the following equipment: 2013 Peterbilt, VIN# 1XPHD49XXDD156042 (the "Collateral").

7. ENGS holds a perfected purchase money security interest in the Collateral. A true and correct copy of the Contract and Texas Certificate of Title are attached hereto as Exhibit A and incorporated herein by reference. The ENGS' Affidavit required by Bankruptcy Local Rule 4001-1(b)(4) is attached hereto as Exhibit B and incorporated herein by reference.

8. As of the Petition Date, Debtors are indebted to ENGS in the amount of \$23,729.64. ENGS estimates the value of the collateral to be \$26,100.00. *See* Proof of Claim 1-1.

9. Debtors have failed to schedule the Collateral as a secured claim or provide for it in their Chapter 13 Plan. Curiously, however, Debtors have scheduled ENGS as an unsecured creditor, thereby suggesting that perhaps they sold the Collateral out of Trust.

REQUEST FOR RELIEF

10. Pursuant to sections 105 and 362(d) of the Bankruptcy Code, ENGS seeks an order lifting the automatic stay to allow ENGS to exercise its available legal and contractual remedies, including repossession and foreclosure, of the Collateral.

A. The Automatic Stay Should be Lifted for Cause Pursuant to Section 362(d)(1)

11. The automatic stay should be terminated pursuant to 11 U.S.C. § 362(d)(1) for cause because ENGS does not have adequate protection for the value of its interest in the Collateral. The Collateral is not being administered in the Chapter 13 Plan. Cause also exists to modify any automatic stay applicable to co-Debtor, Pandora Britt.

WHEREFORE, ENGS respectfully requests that this Court enter an order lifting the automatic stay imposed by section 362 of the Bankruptcy Code, and as to any co-Debtor stay applicable to Pandora Britt, waiving the fourteen day stay of such order, and granting such other and further relief to ENGS as this Court deems proper.

Dated: October 1, 2019

Respectfully submitted,

KANE RUSSELL COLEMAN LOGAN PC

By: /s/ Michael P. Ridulfo
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CERTIFICATE OF CONFERENCE

On October 1, 2019, counsel for ENGS communicated by e-mail with Debtors' counsel with respect to the issues raised herein. No response was received. On September 30, 2019, the undersigned left a voice message for Debtors counsel. No return call has been received.

/s/ Michael P. Ridulfo
Michael Ridulfo

CERTIFICATE OF SERVICE

This is to certify that on the 2st day of October, 2019, a true and correct copy of the foregoing was served via the Court's CM/ECF notification system on those who have consented to receive electronic notice and by regular mail to those on the attached service list.

/s/ Michael P. Ridulfo
Michael Ridulfo

1540-4

Case 19-42383

Eastern District of Texas

Sherman

Tue Oct 1 14:31:22 CDT 2019

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<p>The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).</p>		
INGS COMMERCIAL FINANCE CO. One Pierce Place, Suite 1100 West Itasca, IL 60143	Best Buy PO Box 78009 Phoenix AZ 85062	(d)Engs Commercial Finance Co. One Pierce Place, Suite 1100 West Itasca, IL 60143
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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d) PRA Receivables Management LLC PO Box 41021 Norfolk VA 23541-1021	(d) PRA Receivables Management, LLC PO Box 41021 Norfolk, VA 23541-1021	End of Label Matrix Mailable recipients 48 Bypassed recipients 2 Total 50
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